FEDERAL BUREAU OF INVESTIGATION

SURREPTITIOUS ENTRIES

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OFFICE OF INFORMATION AND PRIVA

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UNITED STATES GOVERNMENT

Memorandum

SECRET

1 - Mr. Tolson
1 - Mr. DeLoach
1 - Mr. Bishop

TO : Mr. W. C. Sullivan

DATE: June 23, 1969

JUNE

1 - Mr. Sullivan
1 - Mr. G.C. Moore
1 - Mr. C.D. Brennan
1 - Mr. Grigalus
1 [redacted]

FROM : C. D. Brennan

Classified by SP2 [redacted]
Declassify on: OADR
5/26/83

TECHNICAL

SUBJECT: ELECTRONIC SURVEILLANCES

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE.

SYNOPSIS:

Pursuant to the Director's instructions, this summarizes the Bureau's policy on wiretaps and microphone surveillances.

Concerning wiretaps, the Director, since 1924, opposed the use of wiretapping as a general practice and has openly stressed for years that wiretaps, where necessary, should be limited and tightly restricted. In 1940 President Roosevelt authorized wiretaps when the national securitywas affected. Since that date, every Bureau request for a wiretap has been presented to the Attorney General in writing for approval. This policy continues to date.

REC 18 66-8160-3111

Attorneys General Kennedy, Katzenbach, and Clark were clearly informed of the Bureau's policy concerning wiretaps at the time they took office. Kennedy expressed an interest in increased [redacted] (S) [redacted] Furthermore, at his urging, telephone surveillance was placed on Martin Luther King. In addition, he personally approved request for telephone surveillance on a case involving racial violence. Katzenbach, while Deputy Attorney General, requested the FBI to consider placing telephone surveillance on the parents of a Mississippi civil rights worker. The Director reluctantly agreed to this wiretap in view of potential embarrassment. On 3/30/65, the Director advised Katzenbach that back under the administration of Attorney General Clark, he, the Director, recommended that all Government agencies refrain from wiretapping unless there was specific approval in each instance by the Attorney General and this had been repeated to subsequent Attorneys General. The Director added he was the only head of an investigative agency who did not have the authority to authorize a wiretap. On [redacted] Attorney General Clark was informed by the Director that orders had been given to reduce the number of telephone surveillances being operated by the Bureau in view of the President's feelings concerning use of electronic devices as well as Clark's question as to the actual value of the same. The Director pointed out that this was being brought to Clark's attention in the event possible inquiries or protests were received from State Department and [redacted] Clark failed t

Classified by [redacted]
Exempt from GDS, Category [redacted]
Date of Declassification Indefinite

Ramsey

6 [redacted] (S) 66-8160

ENCLOSURE 66-8160-3435

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Memorandum C. D. Brennan to Mr. W. C. Sullivan
RE: - ELECTRONIC SURVEILLANCES
66-8160

respond to Bureau's inquiry of July 2, 1968, concerning effect the Omnibus Crime Bill would have on the Bureau's electronic surveillances in the internal security field.

Since 1938, Bureau authority has been required for microphone surveillances. Over the years, the Bureau sought legal advice from the Department concerning microphone surveillanc and admissibility of evidence obtained from them. In 1952, Attorn General McGranery authorized their use in security cases even though trespass may be committed. Attorney General Brownell also permitted their use in internal security cases and advised that relative to criminal cases, they should be used in only the important investigations.

The Bureau's policy regarding microphones in criminal cases was furnished to Attorney General Kennedy's Deputy Attorney General White. Kennedy attempted to deny knowledge of microphones in criminal cases. The facts repudiated his claimed lack of knowledge. On 3/30/65 Attorney General Katzenbach informed the Director that he desired that authority for microphone surveillanc be obtained from him in similar manner as in wiretap cases. On 7/12/65 he requested that all microphones be discontinued in view of hearings by Long Committee. Commencing 1965, microphone surveillances were again used and under authority of the Attorney General. When Clark became Acting Attorney General on 10/3/66, the Bureau was operating one microphone surveillance. On 2/29/68 he gave written approval for another microphone surveillance, which involved penetration of communications equipment at a diplomatic establishment.

A review of policy concerning wiretaps and microphones discloses that Director's policy has been on a sound basis.

ACTION:

This memorandum be referred to the Director for his information.

MJR/lf

WCS/s

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DETAILS - PAGE TWO

ENCLOSURE 66-7160-3835

Memorandum C. D. Brennan to Mr. W. C. Sullivan
RE: ELECTRONIC SURVEILLANCES
66-8160

DETAILS:

Wiretapping Policy (Telephone Surveillances)

The Director, since he was appointed head of the FBI in 1924, has consistently opposed the use of wiretapping as a general practice. He stressed that wiretaps, where necessary, should be used under the most limited and tightly restricted conditions. His views, openly expressed over the years, were made known to Congress, to Government officials, and to the various Attorneys General.

On December 2, 1929, the Director presented the Bureau's policy to Congress before the House Appropriations Committee. He testified, "...We have a very definite rule in the bureau that any employee engaging ih wire tapping will be dismissed from the service of the bureau." He also testified, "While it may not be illegal, I think it is unethical...." As early as 1931 the Director informed the then Attorney General William D. Mitchell that as a matter of policy any request for a wiretap will be forwarded to the Department for their approval. In 1940 President Roosevelt by an historic memorandum authorized and directed the then Attorney General Robert H. Jackson, in such cases as he approved, to utilize wiretaps on "persons suspected of subversive activities against the Government of the United States, including suspected spies." From the time of the Presidential Directive of 1940 to this very date, each request for a wiretap has been presented to the Attorney General in writing for his specific authorization. In 1946 President Truman reaffirme Roosevelt's policies and procedures involving wiretapping in security cases. It is noted that the then Attorney General Tom C. Clark prevailed upon President Truman to modify the rules to inclu criminal cases where human life was in jeopardy, such as kidnapping and extortion. As a result, President Truman modified the existin directive to include certain criminal cases.

Policy Under Robert F. Kennedy

Robert F. Kennedy took office as Attorney General on January 21, 1961, and resigned on September 3, 1964. Prior to taking office, the Director furnished him with an outline of the FBI's policy and procedure on wiretapping. This outline set forth the basic authority contained in President Roosevelt's Directive

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of May 21, 1940, and traced the development of policy through 1960. Included in this outline was the following:

> "Under our present policy we request specific authorization in writing and in advance from the Attorney General before any technical surveillance is utilized. This is the policy followed by the Federal Bureau of Investigation under the direction of each Attorney General for over twenty years, since President Roosevelt's memorandum of May 21, 1940."

On January 3, 1962, Attorney General Kennedy mentioned, in a conversation with Assistant Director Evans, that the Director had furnished him information which had obviously emanated from

(S) [redacted] and said he had passed it on to President John F. Kennedy who had commented on its great value to him. Because of this, the Attorney General wanted to be certain that any information of this type which might be of interest to the President would be given to him to bring to the attention of the President. The Director, by memorandum dated January 8, 1962, assured Mr. Kennedy that this had been the practice in the past and that it would be the practice in the future.

On January 20, 1962, Mr. Kennedy expressed an interest in increased

(S) [redacted] In response to the Attorney General's request, the Director advised him by memorandum dated January 26, 1962, of the extent of the FBI's existing coverage. The Director then proposed exploratory

(S) [redacted] to determine which might produce useful intelligence. If the Attorney General approved these proposals, the Director stated, the FBI would obtain clearance from the Department of State, as well as authorization from the Attorney General, for each new

(S) [redacted]

By memorandum dated January 31, 1962, the Department informed the Director that the Attorney General had approved the Director's recommendations for increased

(S) [redacted]

With regard to Martin Luther King, leader of the Southern Christian Leadership Conference, Mr. Kennedy stated

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that he desired to see Assistant Director Courtney Evans. On July 16, 1963, Kennedy told Evans that he was considering the possibility of a telephone surveillance of King because of King's communist associations. He was advised by Evans that since King was in travel status practically all the time, the productivity of such a surveillance was doubtful and he was asked to consider the repercussions if it ever became known that such surveillance had been instituted on King. Mr. Kennedy said he was not concerned about possible repercussions and that he thought it advisable to have as complete coverage as possible in view of the possible communist influence in the racial situation. He was told that the feasibility of such coverage would be determined and an appropriate recommendati would be submitted to him. On July 25, 1963, Mr. Kennedy informed Evans he had changed his mind concerning his request and thought it ill-advised at that time, but on October 7, 1963, a request for authority to place a telephone surveillance on King's residence was sent to Mr. Kennedy. On October 10, 1963, he authorized this surveillance and a surveillance on any future residence of King by his written signature. This telephone surveillance was installed on November 8, 1963, and was discontinued on April 30, 1965.

Four small Negro children were killed on Sunday morning, September 15, 1963, when the Sixteenth Street Baptist Church in Birmingham, Alabama, was bombed. Attorney General Kennedy personall approved the FBI's request for technical surveillances on seven suspects, and an attorney known to have knowledge of acts of racial violence. These wiretaps were requested because the FBI "believed that additional activity on the part of those who are responsible for the bombings could easily lead to more rioting, bloodshed and lo of life, materially affecting the security of the United States."

Civil rights workers Michael Henry Schwerner, Andrew Goodman, and James Earl Chaney disappeared on June 21, 1964, at Philadelphia, Mississippi. Prior to the time their mutilated bodies were discovered buried beneath an earthen dam, Deputy Attorney Gener Nicholas deB. Katzenbach, in the absence of Attorney General Kennedy requested the FBI to consider placing a technical surveillance on the parents of Schwerner. Mr. Katzenbach was concerned that the disappearance of the three civil rights workers might be a hoax and that Schwerner's parents, who had a Communist Party background, might attempt to exploit the disappearance. On June 30, 1964, Mr. Katzenbach personally approved this technical surveillance.

The Director reluctantly agreed to this wiretap, because the Bureau might be embarrassed if the disappearance were not a

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hoax and the wiretap became publicly known. The Director noted that he was requesting approval for this technical surveillance "only because Katzenbach has forced the issue."

Policy Under Nicholas deB. Katzenbach (9/3/64 to 10/3/66)

In a discussion between the Director and the Attorney General on March 30, 1965, Mr. Katzenbach stated that he would like to set up a procedure, similar to that in effect concerning technical surveillances, whereby he would be advised by the

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Bureau of microphone surveillance installations. On the same day, the Director sent a confirming memorandum to the Attorney General which contained the following comments concerning wiretapping:

"With reference to the proper controls over wiretapping and the installation of microphones, you will recall that I advised you that back under the administration of Attorney General (Tom) Clark I recommended that all Government agencies refrain from wiretapping unless there was specific approval in each instance by the Attorney General who is the chief law officer of the Government. I repeated the same recommendation to each successive Attorney General following the administration of Attorney General Clark.

"I have always felt that there was a very lax control in the handling of wiretapping by Government agencies. I am the only head of a Government investigative agency who does not have the authority to authorize a wiretap, but under the system which I personally set up. Therefore, requests for wiretaps are sent by me to the Attorney General for his approval or disapproval. I know that no such system is followed in other branches of the Government and, in fact, in many instances subordinates quite far down the line of authority tap telephones without the specific approval of the head of the agency and certainly without specific approval of the cabinet officer in charge of the department.

"I still feel quite strongly that no Government agency should tap a telephone unless it is specifically approved in each instance by the Attorney General. This would certainly circumscribe promiscuous wiretapping on the part of Government agencies and would centralize in one place, the Attorney General's office, a record of any phone taps which have been placed by a Government agency.

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Memorandum C. D. Brennan to Mr. W. C. Sullivan
RE: ELECTRONIC SURVEILLANCES
66-8160

"As you are aware, in the case of the FBI we do not request phone taps except in cases involving kidnaping and espionage. This has been predicated upon my theory that when the life of an individual or the life of the Nation is in peril a phone tap is justified for intelligence purposes as any information obtained over a phone tap cannot be used in the trial of a criminal case."

On July 30, 1965, FBI representatives and Departmental attorneys conferred regarding a Presidential memorandum, dated June 30, 1965, which dealt with technical and microphone surveillances. This memorandum, addressed to all heads of executive departments and agencies, established strict guidelines for the use of technical surveillances, principally the obtaining of approval from the Attorney General. It also required the submission of a complete inventory of all mechanical and electronic equipment capable of intercepting telephone conversations.

Because the Bureau obtained authority from the Attorney General and consulted with the Department regarding the use of these surveillance techniques, the Departmental representatives stated that the Bureau was already complying with the Presidential memorandum and that it would not be necessary to submit an inventory of equipment.

In early 1965, the Senate Subcommittee on Administrative Practice and Procedure, headed by Senator Edward V. Long of Missouri and popularly known as the *Long Committee*, began inquiries into Federal encroachments on citizens' privacy. In view of these inquiries, it was necessary to severely restrict and, in many instances, eliminate the Bureau's use of these techniques.

Since the Bureau's heavy responsibilities for investigative results continued, the Director, in a memorandum dated September 14, 1965, expressed to the Attorney General concern that undue limitations on special investigative techniques would make it far more difficult to combat subversion and organized crime. The Attorney General, in a memorandum dated September 27, 1965, agreed with the Director and authorized the resumption of several special investigative techniques. In this memorandum the Attorney

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General commented, "...I am aware that such techniques have been judiciously used in the past, and while they may have been abused by other agencies, I do not believe they have been abused by the Bureau in any instance."

Policy Under Ramsey Clark (10/3/66 to 1/20/69)

Acting Attorney General Ramsey Clark by memorandum to the Director dated October 10, 1966, returned approvals for nine telephone surveillances. The memorandum contained a request that Mr. Clark be advised of all existing telephone and microphone surveillances.

On October 13, 1966, Mr. Clark was briefed by Assistant to the Director C. D. DeLoach with the Director's approval. Mr. Clark indicated he felt all the surveillances were entirely justified.

By memorandum 493 dated November 3, 1966, Acting Attorney General Ramsey Clark transmitted to all United States Attorneys instructions that they be alert as to each prosecutive case for evidence that might be tainted because of the use of electronic devices during the investigation.

A letter to all Special Agents in Charge dated November 1 1966, Number 66-72, quoted Mr. Clark's memorandum of November 3, 1966, and instructed that if any inquiries were received from United States Attorneys, the Bureau should be immediately advised.

By memorandum dated November 28, 1966, the Director informed Ramsey Clark that the Director had given orders to reduce the number of telephone surveillances being operated by the Bureau in view of the President's feelings concerning the use of electronic devices as well as Clark's question as to the actual value of the same. The Director pointed out that this was being brought to Clark's attention in the event possible inquiries or protests are received from State Department and [redacted]

Memorandum of May 26, 1967, from the Director pointed out to Ramsey Clark that from time to time the Bureau receives [redacted] which are forwarded to Clark for his approval. The memorandum stated that in view of the fact that the FBI is not in a position to evaluate the substantive merits of each case, it was being recommended that in the future the interested

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agencies should submit their requests directly to the Attorney General.

By memorandum dated June 1, 1967, Clark replied that although the Director was correct in his observation, he, Clark, did not believe that the requesting agencies should bypass the Bureau and communicate directly with him.

Memorandum of July 2, 1968, from the Director requested the Attorney General's views and statement of policy concerning the effect the Omnibus Crime Control and Safe Streets Act of 1968 would have on our past, present, and future electronic surveillances in the internal security field. No reply was received from Clark in spite of follow-ups having been sent on four occasions prior to his leaving office.

Microphone Surveillances Policy

The early use of microphones by the FBI is not recorded in any detail. It appears that they were used in the late 1920's and early 1930's to obtain intelligence in criminal cases. Prior Bureau authorization of microphone installations was first required in 1938 and since that time, Bureau headquarters has maintained tight control over the field in the use of these devices. Over the years, the FBI continually sought legal advice from the Department concerning microphone installations and the admissabilit of evidence obtained from them. In the early 1940's the Department relied on a Supreme Court decision in Goldman v. U.S. which held th a microphone surveillance was not equivalent to an illegal search and seizure prohibited by the Fourth Amendment. On this basis, the Department advised that evidence from a microphone surveillance would be admissable. In 1946, the Department, recognizing the unsettled state of the law in this area, continued to maintain their position even though Bureau officials continued to be concerned about the admissability of evidence obtained from microphones involving trespass.

In 1951, the overall issue of microphones involved in trespass was presented directly to the Department. The Department ruled that they would not approve any installation of microphones involving trespass, an illegal activity. This presented a problem because under the then existing law it was difficult to determine what actually constituted trespass. Faced with this situation, the Executive Conference of May 5, 1952, unanimously recommended that microphones be installed without trespass and that if this is not possible and the intelligence to be gathered is a necessary adjunct to the investigation in select cases, consideration be given to authorizing a microphone. In 1952 Attorney General McGranery

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authorized microphone installations in security cases even though trespass may be committed. Attorney General Brownell in a memorandum dated May 20, 1954, allowed the use of microphones in internal security cases. Relative to criminal cases, it was noted that he was "not as strong but he takes cognizance of the need for microphone surveillances in cases affecting the national safety and indicates they should be used in only the more important investigations."

The Executive Conference on June 20, 1959, considered whether the Bureau should seek approval from the Attorney General before instituting microphone surveillances in specific criminal cases. The Executive Conference unanimously agreed, and the Director approved, that the Bureau should continue as in the past to rely upon the authority contained in Attorney General Brownell's May 20, 1954, memorandum. This policy was still being followed on January 21, 1961, when Robert F. Kennedy became Attorney General and launched an intensified Federal drive against organized crime.

Policy Under Robert F. Kennedy

Early in 1961, Attorney General Kennedy had agreed to testify concerning proposed wiretap legislation being considered by the Senate Judiciary Subcommittee.

To assist the Attorney General in this regard, the Bureau delivered a memorandum to Deputy Attorney General White dated May 4, 1961. This memorandum stated that the Bureau's views on the use of microphone surveillances in FBI cases were being furnished in connection with the Attorney General's contemplated appearance before the Senate Subcommittee on Constitutional Rights. Moreover, it spelled out that the Bureau had interpreted Attorney General Brownell's letter of May 20, 1954, to give it authorization for use of microphone surveillances in criminal cases.

In a memorandum dated July 6, 1961, Mr. Evans noted that there was serious question as the result of a conference held on that date as to whether the Attorney General was aware of the difference between a technical and a microphone surveillance, and asked for permission to discuss this subject with the Attorney General. The Director approved, and Mr. Evans saw Mr. Kennedy in regard to this matter on July 7, 1961. Mr. Evans recorded this discussion with the Attorney General in a memorandum dated July 7, 1961.

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Memorandum C. D. Brennan to Mr. W. C. Sullivan
RE: ELECTRONIC SURVEILLANCES
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A memorandum on FBI stationery, classified "Top Secret," dated August 17, 1961, enclosed a proposed letter to the telephone company in New York City requesting [redacted] was (S) delivered to Mr. Kennedy on August 17, 1961, by Assistant Director Courtney Evans. This memorandum for the Attorney General requested his approval for the use of [redacted] as an adjunct (S) to the Bureau's microphone surveillances in security and major criminal cases in New York City.

On March 30, 1962, Mr. Kennedy summoned Mr. Evans to his office and told him that Joseph Volpe, formerly Chief Counsel for the Atomic Energy Commission, had informed the Attorney General that he had learned on the "highest authority" that Volpe's office had been covered with a microphone surveillance during 1953 and 1954. Mr. Kennedy asked Mr. Evans if this had been an FBI microphone surveillance. Mr. Evans later reported to the Attorney General that this was not an FBI microphone surveillance.

On March 19, 1963, Mr. Kennedy was briefed on organized crime investigations in the FBI's Chicago Office. This briefing was attended by other Departmental officials, including William Hundley, Chief of the Organized Crime and Racketeering Section. After Special Agents of the FBI told them about the corruption of local law enforcement officers by Chicago hoodlums, a tape recording from an FBI microphone surveillance was played for them.

On another occasion, Mr. Kennedy visited the New York Office of the FBI for a briefing on organized crime. Participants in this conference, held November 4, 1963, were Mr. Kennedy, Mr. Ed Guthman of Mr. Kennedy's staff, Assistant Directors Courtney Evans and John F. Malone, and approximately 25 FBI Special Agents assigned to the New York Office. At this conference, a tape recording taken from an FBI microphone surveillance was played for Mr. Kennedy

Subsequently, on May 24, 1966, United States Solicitor General Thurgood Marshall filed a memorandum before the Supreme Court advising the Court that there was an electronic surveillance of Fred Black, a Washington lobbyist, and that conversations between Black and his attorneys had been intercepted.

On July 13, 1966, Solicitor General Thurgood Marshall advised the U. S. Supreme Court that under Departmental practice, in effect for a period of years prior to 1963 and continuing into 1965, the Director of the FBI was given authority to approve the installation of microphones for intelligence purposes when required in the interest of internal security or national safety including

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organized crime, kidnapping, and matters wherein human life might be at stake.

On July 16, 1964, the Director, in a telephone conversation with the President, discussed the FBI's investigation of events surrounding the murder of Negro educator Lemuel Penn on a Georgia highway. During this telephone conversation, the Director told the President that the FBI had installed a microphone in a building next to the garage where Klansmen gathered in Athens, Georgia.

Policy Under Nicholas deB. Katzenbach

Attorney General Katzenbach, in a conversation with the Director on March 30, 1965, stated that he would like to set up a procedure, similar to that in effect concerning technical surveillances, whereby he would be advised by the Bureau of microphone surveillance installations. On the same day, the Director sent a memorandum to the Attorney General which contained the following:

> "In line with your suggestion this morning, I have already set up the procedure similar to requesting of authority for phone taps to be utilized in requesting authority for the placement of microphones."

The Attorney General, on July 12, 1965, informed the Director that he would like to have all microphone surveillances suspended at that time, because of the pressure being brought to bear, particularly on the Internal Revenue Service, by the United States Senate Subcommittee on Administrative Practice and Procedure headed by Senator Long of Missouri. The Attorney General said that he wanted to be in a position to state that the FBI had no microphone surveillance coverage.

In response to several requests from the Bureau for guidelines in the use of special investigative techniques, Attorney General Katzenbach, by memorandum dated September 27, 1965, advised that microphone surveillances should be restricted to the internal security field. After the Attorney General again granted the FBI authority to use microphone surveillances to gather intelligence in national security matters, the Bureau, following the procedure established by Mr. Katzenbach to obtain his authorization, reactivated microphone surveillance in selected cases.

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Memorandum C. D. Brennan to Mr. W. C. Sullivan
RE: - ELECTRONIC SURVEILLANCES
66-8160

In a memorandum dated January 13, 1966, Attorney General Katzenbach referred to the relationship between former Attorney General Kennedy and the FBI in regard to the use of microphone surveillances in the investigation of organized crime. Mr. Katzenbach stated that Mr. Kennedy had informed him that he was unaware that the FBI used microphone surveillances against organized crime. Mr. Katzenbach stated, however, he believed, "that the actions of the FBI in this area were in any event justified on the basis of understandings between the Bureau and prior (pre-1961) Attorneys General. I am prepared to stand behind those actions."

Policy Under Ramsey Clark

At the time Clark became Acting Attorney General on October 3, 1966, the Bureau was operating only one microphone surveillance. This was at the request of the [redacted] and under the written approval of the Attorney General. [redacted]

OBSERVATIONS:

A review of policy concerning wiretaps and microphone surveillances discloses that the Director's policy has always been on firm and sound basis. He has continually publicly stressed that, where wiretaps are necessary, they should be limited and tightly restricted. He has always acted under the rules set down by respective Presidents and Attorneys General.

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